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ABSTRACT

The Surgeon General has stated that the time is here for action, and that the data is sufficient to justify actions. A clear and present danger of the effects of televised violence on children has been demonstrated to us all. The Foundation To Improve Television is presently before the Federal Communications Commission (FCC) with a Petition for Rule-Making to have the FCC add a section on violence and horror television (TV) programs curtailing such programs during typical children viewing hours. Despite the First Amendment to the Constitution, the FCC has the authority and the responsibility to regulate the amount of violence and horror portrayed on TV because of its duty to act in the public interest and protect public health. There is sufficient evidence now to support the finding that the portrayal of excessive violence on TV is inimical to the mental health of our children. Television has immense potential for reaching children, and the Foundation will continue to encourage positive programing while fighting broadcasting that is harmful to children. (SH)

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STATEMENT OF WILLIAM S. ABBOTT, PRESIDENT OF
THE FOUNDATION TO IMPROVE TELEVISION
BEFORE THE
SENATE SUBCOMMITTEE ON COMMUNICATIONS
MARCH 24, 1972

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I appreciate the opportunity to present our views here today to your Committee. The Foundation To Improve Television, incorporated in 1969, and with the intense interest and personal concern of its national board of directors, has felt from the time of its inception that we, each one of us in this country, are to blame for allowing television to become a school of violence for our young.

I speak with some trepidation here today, fearing that here on the last day of these hearings, that maybe these hearings too, and the interest generated thereon, like the hearings in 1954 by the Senate Subcommittee To Investigate Juvenile Delinquency, and the round of Juvenile Delinquency hearings in 1964, will gradually fade away, and the television industry and government will quietly forget the public expression of concern about the clearly scientifically demonstrated harmful effects of televised violence on our children - the same concern evidenced at these earlier hearings - and continue to operate television entertainment as the private domain of a few people intent on broadcasting for profit at our children's expense.

If anything is clear by now, here on the fourth day of your hearings, it is that the evidence is now in. The Surgeon General, our nation's highest official entrusted with the duty to protect the health of our citizenry, and most importantly, our children, has stated that the time is here, now, for action and that the data is sufficient to justify action. A clear and present danger has been demonstrated to your Committee, to the Federal Communications Commission, to the television industry, to the parents of children across this land.

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What do we do? What action can be taken?

We could wait patiently while the industry, once again, deliberates, promises, and procrastinates, as it has for the past eighteen years since the Congress and our citizenry first became alarmed at this problem, and then continues to produce and peddle the same steady diet of murder and mayhem to our children while we all do nothing more than bemoan this "lawless and violent" society, perhaps the most violent society of any in the world today. Over the past two decades, the research, the reports, the Congressional hearings have changed nothing. The studies still continue, all the while our children are still—this afternoon, tomorrow and next week—being force fed the steady diet of violence. The aim of the television industry has been to keep the studies going and then no one can say they don't care. And you know, as evidenced by the Gerbner Study of the Annenberg School of Communications, University of Pennsylvania, that the violence index of the great mass of television fare for our children is at an all-time high.

We think society has a right of self defense. We are no longer patient. Specific action has been taken. We are presently before the Federal Communications Commission with a Petition for Rule-Making to have the Commission add the following new Section to its Rules:

"§ 73. Violence and Horror Television Programs.

"(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a television broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting the broadcasting of television programs which contain an excessive amount of fictionalized violence and horror during the hours prior to 9:00 p. m.

"(b) The determination whether a particular program comes within the provisions of paragraph (a) of this section depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section if it contains fictionalized portrayals of killings, beatings, stabbings, stranglings, or any other acts of physical brutality or mental cruelty which, when viewed by the average person, would be considered excessive. For purposes of this provision, the definitions of violence and horror are as follows:

"Violence - the overt expression of force intended to hurt or kill."

"Horror - a painful emotion of fear, dread, abhorrence."

In a carefully researched and extensive legal brief, prepared by one of the outstanding communications law firms in Washington, D.C., we have shown to the Commission that, despite the First Amendment to the Constitution and Section 326 of the Communications Act of 1934, the Commission has the authority and the responsibility to regulate the amount of violence and horror portrayed on television. The requisite authority is found in the Commission's duty to act in the public interest, which includes protection of the public health. As a result, the Commission may regulate television programming which endangers the public health. The substantive legal considerations, which have been researched by leading constitutional lawyers, involve an interplay between the Fifth Amendment to the Consitution - the right to be free from the deprivation of life liberty or property without due process of law- and the First Amendment. There is sufficient evidence to now support the finding that the portrayal of excessive violence on television during children's viewing hours is inimical to the mental health of our children. The Commission now has the power to act with respect to programming content. I quote from a report of the Attorney General of the United States to the President released in 1960:

"But in any event, a review of existing authority indicates that the Commission may, without running afoul of constitutional or statutory safeguards of freedom of speech, give considerable weight to advertising practices and programming in the context of licensing, rule making

or investigative proceedings. It is true that the statutory provision relating to censorship and the First Amendment delineate the outer limits of the Commission's powers. Yet, within those limits, considerable scope is left for effective regulatory action.

It is clear that Congress, the Supreme Court, the Attorney General, and the Commission have recognized that, despite the First Amendment and Section 326 of the Communications Act, the Commission does possess the power to review programming and penalize those that have broadcast or propose to broadcast certain types of programs by denying them a license in the first instance or refusing to renew an existing license. Even a cursory review of the above authorities leads to the conclusion that, within the public interest standard, the Commission may (and has) condemn certain types of programming without falling afoul of the First Amendment and Section 326 of the Act. Perhaps it's the puritanical heritage of Americana, but the Commission has reacted vigorously when broadcasts involved coarse and vulgar language, horse racing where illegal, unfair treatment of social and religious groups, defamatory attacks, medical diagnosis and treatment, rigged quiz shows, and payola, and, it seems, would also react unfavorably if nudism, sexual descriptions, and four-letter words were rampant on radio and television. Recently, of course, smoking became taboo as well.

We believe that violence and horror is outside the realm of the First Amendment. It cannot be seriously claimed that hour after hour of television murder and mayhem is on a parity with the Founding Fathers' concern with potential suppression of political economic and social ideology, the *raison d'être* of the First Amendment. And may I remind the Committee that with respect to our excessive preoccupation with obscenity, obscenity has never been proven harmful, whereas television violence has now been well documented as a menace to the mental health of children. Might I add that this emphasis on controlling obscenity, but permitting all kinds of portrayed violence is completely

reversed in many European countries, and these countries by any standards, have markedly less violent societies. Where television is used in this land as the great baby-sitter, our children have the right to be free from the daily diet of violence served by the broadcast industry. In a society where a great number of our mothers now are working to support their families, the solution of the "button" as the means to control the program intake is simply a cop-out, a surrender to the brutalizing of yet another generation.

The Rule requested by the Foundation does not ban all television violence, but would curtail such programs during typical children viewing hours (until 9:00 p. m.). In October of 1970, the Commission acted on our Petition by officially stating that the Petition would be held in abeyance until the Report of the Surgeon General had been received. That Report is now in. We will now press for favorable action at the Commission.

We have similarly acted on another front. We believe that where governmental agencies have become the protector of the industries they are supposed to regulate, the courtroom is the last arena where the individual citizen can meet big business and big government and effect change. Through the courts, we hope to make it impossible, or at least unprofitable, to present violence as entertainment during children's viewing hours. A little over one year ago, lawyers representing the Foundation To Improve Television filed an action in the Federal court for the District of Columbia seeking to enjoin the sponsors of the program, "Wild, Wild West;" Post-Newsweek Stations, Capital Area, Inc., which owns television station WTOP (Channel 9); CBS; and the CBS Enterprises, Inc., which syndicates the program; Television Advertising Representatives, Inc., which sells the advertisements for the program; and the Federal Communications Commission, from presenting or allowing the presentation of the rerun, "Wild, Wild West," which has been shown Monday through Friday on Channel 9 in Washington, D. C. at 4:00 p. m. and on Saturday at 5:00 p. m. The Foundation also requested the court to

grant a declaratory judgment that children have a constitutional right under the Fifth Amendment to be free from the mental harm caused by the viewing of television programs that portray fictional violence and horror."

This landmark case, which will be a precedent for similar actions in every major television market area in the country, will be argued here in the Court of Appeals within the next couple of months.

In a typical "Wild, Wild West" program on WTOP, monitored by the Foundation, children saw the following:

"Policeman walking along waterfront, strangled by henchmen of gang leaders and left along deserted dock; a threat to blow up a city by use of several small glass pellets; a gang leader killing a professor with a pea shooter and one of the explosive pellets; a girl being abducted while companion is attacked by monkey and then shot at by gang leader using cross-bow with poisoned arrow; a gang leader sparring with three huge henchmen, using a cave equipped with lethal devices; the hero, captured by three men, one with a gun. During ride to gang headquarters in specially built stagecoach, neck of man with gun encircled by steel bands strangling him, second pushed out of coach by the hero and third held at gunpoint. While climbing out of coach, hero accosted by gang leader and henchman; hero dropped through trapdoor by gang leader and encased in iron cage. Gang leader goes off to blow up the city; hero terrorized with knife. Hero escapes cage, knocks out two men, escapes; hero fights gangleader's bodyguard, "knees" him twice and subdues him with karate chop."

Meanwhile, this sadistic and violent series is being peddled to stations across the country to what must be a growing audience of violence-addicted children, if we are to

believe the attached advertisement of Broadcasting Magazine, dated February 28, 1972. This is the kind of "voluntary cooperation" we have come to expect from the television industry.

The First Amendment, in guaranteeing free speech, does not license anyone to use our airwaves to train the nation's youth in violence. The Foundation does not expect or hope to become a board of censors. Rather, we hope to further the development of an open and free society by ensuring that television broadcasting is not the private domain of people capable of no better entertainment offering than death and destruction, especially when our children are the victims.

Television has an immense potential for reaching children. The possibilities of assisting and enforcing the education process are far-reaching, and the Foundation will seek to encourage such positive programming. On the other hand, we will continue to fight television broadcasting that is harmful to children through every forum available to us as citizens.